

REMARKS

This Amendment is in response to the office action of May 16, 2007, wherein the following species and subspecies were identified:

Species:

- I. The species as best shown in Figure 1;
- II. The species as best shown in Figure 2; and
- III. The species as best shown in Figure 5.

Subspecies:

- A. As best shown in Figure 3; and
- B. As best shown in Figure 4.

The office action required election of a single species and a single subspecies. This restriction requirement is traversed.

In response, Applicants provisionally elect species II, corresponding to the species “as best shown in Figure 2.” Claims 1-14 and 35-38 are readable upon the elected species.

Applicants provisionally elect subspecies B, corresponding to the species “as best shown in Figure 4.”

Traversal

The restriction is traversed as procedurally improper and substantively ambiguous. 37 CFR § 1.146 allows the Examiner in the first office action: 1) to assert a restriction requirement and require Applicant to elect a species in their response; or 2) if the claims are directed to “more than a reasonable number of species,” require restriction of the claims to “not more than a reasonable number of species” before taking further action in the application.

In this application, a restriction requirement drawn between the claims was issued on November 2, 2006. Applicants elected claims 1-14 and 35-38 (the currently pending claims) in a response filed November 13, 2006. The pending claims were then examined on the merits, and substantive rejections were issued in an office action dated December 13, 2006. Applicants filed an Amendment responding to the rejections on February 23, 2007. The next document issued by the USPTO was the immediate species restriction.

The species restriction is procedurally improper because it was not included in the first office action, as provided for in 37 CFR § 1.146. Additionally, the pending claims have

already been examined on the merits. If a species restriction was necessary, it should have been presented before the pending claims were examined. At this time, further examination of all of the pending claims will not place an undue burden on the USPTO because the prior art search for all of the pending claims has already been performed.

Applicants also note that the Amendment filed November 13, 2006 made a minor clarifying amendment to claim 35 that was not intended to affect claim scope, but did not amend any other pending claim. A similar clarifying amendment is made herein to claim 1. Thus, the content of claims 1 and 35 are substantially similar to claims 1 and 35 as originally filed, and all of the other pending claims remain original. Therefore, the immediate species restriction was not necessitated by any Amendment.

The three species identified in the restriction requirement do not constitute “more than a reasonable number of species,” and the differences between the asserted species are not clear. For example, species I shows connectors 20 that are parallel to a longitudinal axis of the stent, while species II shows connectors 20 that are non-parallel to a longitudinal axis of the stent. However, the pending claims do not recite limitations directed toward this difference. Claim 3 recites an “electrical lead.” Species III is the only Figure identified in the restriction that illustrates an electrical lead. However, an electrical lead could be used with the stents illustrated in species I or II. The specification teaches that a stent may include an electrical lead, but the application does not contain any statements that species I or II must exclude an electrical lead. See page 9, line 29-page 10, line 22. Thus, the specific scope of subject matter that would be withdrawn from examination upon election of any particular recited species is not clear.

The invention is defined by the claims, and should not be limited according to any single Figure contained in the application. Although any particular Figure may illustrate a specific feature or embodiment of the invention, the application includes a written description that defines the invention more broadly than any particular Figure. Applicants have provided a set of claims that define the invention separately from any single Figure, with the expectation that the claims would be examined without being limited according to any single Figure. Therefore, Applicants respectfully request withdrawal of the immediate species restriction.

Amendment

Claim 1 is amended herein for clarification purposes only.

Conclusion

In view of the foregoing remarks, it is believed that the present application, with claims 1-14 and 35-38 is in condition for allowance. Early action to that effect is earnestly solicited.

Respectfully submitted,

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